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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JUL 05 2006

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with his U.S. citizen wife and children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 11, 2005.

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel,* dated March 9, 2005. Counsel contends that the district director failed to adequately consider all of the relevant facts. *Statement from Counsel on Form I-290B*, dated February 10, 2005.

The record contains a brief from counsel; copies of the applicant's wife's birth certificate and naturalization certificate; copies of the birth certificates for the applicant's daughters; a copy of the applicant's marriage certificate; letters verifying the employment of the applicant and his wife; tax records for the applicant and his wife, and; a Form I-864, Affidavit of Support, submitted by the applicant's wife on his behalf. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The applicant stated at an interview relating to his Form I-485, Application to Register Permanent Residence or Adjust Status, that in 1995 he entered the United States using a Form I-551 permanent resident card that belonged to another individual. Thus, the applicant procured entry to the United States by making a willful misrepresentation of a material fact (his identity.) Accordingly, the applicant was found to be inadmissible to

the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant does not contest his inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's wife would possibly remain in the United States if the applicant departs. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel,* dated March 9, 2005. Counsel asserts that the applicant's wife will endure significant economic hardship if the applicant departs the United States. *Id.* at 3-6. Counsel states that the applicant's wife would be left to support their two children alone in the United States, and that she would face difficulty working and providing childcare simultaneously. *Id.* at 4.

Counsel states that the applicant's wife would experience hardship if she relocates to Mexico with the applicant. *Id.* at 5-6. Counsel explains that the applicant's wife would be unlikely to find comparable employment in Mexico at wages that are sufficient to support her family. *Id.*

Counsel further suggests that the applicant's wife will endure emotional hardship if the applicant departs the United States, as the applicant makes an emotional contribution to their household. *Id.* at 2.

Counsel contends that the district director failed to adequately consider all of the relevant facts. *Statement from Counsel on Form I-290B*, dated February 10, 2005. Counsel asserts that the district director's decision violates the 5th and 14th Amendments of the Constitution of the United States, as the applicant's wife has a "fundamental right" to keep her family together and raise her children. *Id.* at 4.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if he is prohibited from remaining in the United States. It is noted that the applicant has not submitted a statement from him or his wife discussing hardship that his wife is likely to endure. Thus, the AAO must rely on statements from counsel and limited documentation in order to glean the possible consequences the applicant's departure would have on his wife. However, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The evidence of record contains references to the applicant's two U.S. citizen children. Hardship to the applicant's children is not a relevant concern in the present matter. Section 212(i)(1) of the Act. While the AAO acknowledges that the applicant's children will bear significant consequences if separated from the applicant, only hardship to the applicant's wife may be properly considered in this section 212(i) waiver proceeding.

Direct hardship to an applicant's child is not relevant in waiver proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the child's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation.

The AAO recognizes that the applicant's wife will endure significant emotional consequences as a result of separation from the applicant should she remain in the United States. The AAO further acknowledges that the applicant's wife's hardship will be compounded due to sharing in her children's loss of the applicant's daily presence. However, the applicant has not established that his wife will experience consequences that are sufficiently different or more severe than those commonly experienced by families who are separated as a result of deportation or exclusion.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience

and hardship experienced by the families of most aliens being deported. Thus, the applicant has not shown that his wife's emotional hardship will rise to the level of extreme hardship.

Counsel asserts that the applicant's wife will endure significant economic hardship if the applicant departs the United States, largely due to the fact that she would be left to support their two children alone. While the record shows that the applicant's wife works, the applicant has not submitted recent documentation to show her current income. Nor has the applicant provided an account of his household's monthly expenses, such that the AAO can understand his wife's monetary requirements. Nor has the applicant identified whether he and his wife have savings or other assets on which his wife could draw if needed. The record shows that the applicant and his wife own a home, yet the applicant has not indicated whether they pay a monthly mortgage. Counsel explains that the applicant's wife will be compelled to fund childcare, yet the applicant has not provided whether he and his wife currently hire childcare services, or whether they have relatives on whom they could call for childcare assistance. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Thus, the applicant has not provided sufficient documentation to establish that his wife will endure economic consequences that rise to the level of extreme hardship.

Counsel states that the applicant's wife would experience hardship if she relocates to Mexico with the applicant, and that she would be unlikely to find comparable employment in Mexico at wages that are sufficient to support her family. However, the applicant has provided no documentation to support that his wife would have limited employment opportunities in Mexico. Nor has the applicant described what employment would be available to him, or an estimate of their anticipated expenses in Mexico. Thus, the AAO lacks sufficient documentation to assess the economic impact on the applicant's wife should she relocate there. As the applicant's wife is a native of Mexico, it is evident that she would not be faced with the challenges of adapting to an unfamiliar language or culture there. Yet, as a U.S. citizen, the applicant's wife is not required to reside outside the United States as a result of the applicant's inadmissibility.

Counsel contends that the district director failed to adequately consider all of the relevant facts. *Statement from Counsel on Form I-290B*, dated February 10, 2005. Yet, as discussed above, the applicant has failed to submit adequate evidence, and the record lacks documentation on which to base detailed analysis. Without sufficient explanation and documentation, Citizenship and Immigration Services (CIS) will not speculate as to what hardship may befall the applicant's wife. In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361.

Counsel asserts that the district director's decision violates the 5th and 14th Amendments of the Constitution of the United States, as the applicant's wife has a "fundamental right" to keep her family together and raise her children. However, the denial of the applicant's waiver application does not deprive his wife of the opportunity to maintain family unity or to raise her children. The applicant's wife is free to relocate abroad with the applicant if she chooses. Counsel suggests that the applicant was denied due process of law. However, the Act provides a process through which an applicant can apply to waive a ground of inadmissibility. The applicant availed himself of that process, including the right to appeal the adverse decision of the district director to the AAO. The fact that the applicant failed to meet his burden within that process does not reflect that he was denied due process. Counsel's assertion is not persuasive.

Based on the foregoing, the applicant has not submitted sufficient evidence to show that the instances of hardship that will be experienced by his wife should he be prohibited from remaining in the United States, considered in aggregate, rise to the level of extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

Again, in proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.